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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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Ronnie Manns,

No. CV-24-00879-PHX-DWL

10

Plaintiff,

ORDER

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v.

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PennyMac Loan Services LLC,

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Defendant.

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15 Pending before the Court is a Rule 12(b)(6) motion to dismiss filed by Defendant
16 PennyMac Loan Services LLC (“Defendant”). (Doc. 21.) For the following reasons, the
17 motion is granted.

18

RELEVANT BACKGROUND

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20 On March 18, 2024, Ronnie Manns (“Plaintiff”), who is proceeding *pro se*,
21 commenced an action against Defendant by filing a complaint in Pinal County Superior
22 Court. (Doc. 1-1.)

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24 On April 17, 2024, Defendant timely removed the action to this Court based on
25 diversity jurisdiction. (Doc. 1.)

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On April 25, 2024, Plaintiff filed his operative pleading, the First Amended
Complaint (“FAC”). (Doc. 17.) The FAC alleges that Plaintiff and his wife obtained a
home loan from Defendant, which is governed by a deed of trust, and that “Defendant
breached the contract when [it] misapplied the September 22, 2020, the December 30,
2022, and the March 2, 2023, payments by deeming [those payments] principal reduction

1 instead of a periodic payment.” (*Id.* at 1-2.) The FAC alleges that these acts of
 2 misapplication “have proven very damaging,” but does not explain why. (*Id.* at 2.) Next,
 3 the FAC alleges that Defendant engaged in “Unfair Accounting Practices” “by attempt of
 4 an unauthorized withdraw from Plaintiff’s checking account on January 1, 2022, causing
 5 Plaintiff’s account to be overdrawn and major turmoil between Plaintiff, Plaintiff’s bank,
 6 and in Plaintiff’s household.” (*Id.*) Finally, the FAC alleges that Defendant engaged in
 7 “False Representation” on two occasions by failing to properly document certain payments
 8 made by Plaintiff. (*Id.* at 3.) Based on these claims, the FAC requests “award of a clear
 9 and free title” to Plaintiff’s property, as well as “correction of the record and credit report,
 10 punitive damages of no less than one million dollars (\$1,000,000.00) and whatever other
 11 remedy that the court feels is fair and just.” (*Id.*)

12 On May 10, 2024, Defendant filed the pending motion to dismiss. (Doc. 21.)

13 On May 15, 2024, Plaintiff filed an opposition. (Doc. 22.)

14 On May 23, 2024, Defendant filed a reply. (Doc. 23.)

15 DISCUSSION

16 I. Legal Standard

17 Under Rule 12(b)(6), “to survive a motion to dismiss, a party must allege ‘sufficient
 18 factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *In*
19 re Fitness Holdings Int’l, Inc., 714 F.3d 1141, 1144 (9th Cir. 2013) (citation omitted). “A
 20 claim has facial plausibility when the plaintiff pleads factual content that allows the court
 21 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
22 Id. (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[A]ll well-pleaded allegations of
 23 material fact in the complaint are accepted as true and are construed in the light most
 24 favorable to the non-moving party.” *Id.* at 1144-45 (citation omitted). However, the court
 25 need not accept legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 679-
 26 80. Moreover, “[t]hreadbare recitals of the elements of a cause of action, supported by
 27 mere conclusory statements, do not suffice.” *Id.* at 678. The court also may dismiss due
 28 to “a lack of a cognizable legal theory.” *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th

1 Cir. 2015) (citation omitted).

2 **II. The Parties' Arguments**

3 Defendant argues the FAC is subject to dismissal under Rule 12(b)(6) for an array
 4 of reasons. (Doc. 21.) First, Defendant argues the contract claim fails because the deed of
 5 trust identifies how loan payments will be applied and all three of the alleged
 6 misapplications identified in the FAC were, in fact, proper applications pursuant to the
 7 deed of trust. (*Id.* at 8-10.) Second, Defendant argues the contract claim also fails for the
 8 independent reason that “Plaintiff alleges no damages that flow from [the] alleged breach
 9 of contract—[Plaintiff] instead asks the court to extinguish the deed of trust, rendering him
 10 a free house, and also award him \$1,000,000 in punitive damages. Even if [Defendant]
 11 breached the contract’s terms (it did not), [P]laintiff is not entitled to free and clear title
 12 and punitive damages as a result of the breach.” (*Id.* at 10.) Third, Defendant argues that,
 13 to the extent Plaintiff asserts a separate “unfair accounting practices” claim, any such claim
 14 fails because (a) it is not cognizable under Arizona law and (b) Defendant could not have
 15 acted unfairly by applying Plaintiff’s payments consistent with the deed of trust. (*Id.* at
 16 11.) Fourth, Defendant argues that any “false representation” claim fails because fraud
 17 was not pled with particularity, because there are insufficient allegations of scienter,
 18 reliance, and injury, and because the exhibits attached to the FAC demonstrate there was
 19 no misrepresentation. (*Id.* at 11-12.) Fifth, Defendant argues that any tort claims are also
 20 barred by the economic loss doctrine. (*Id.* at 12.) Sixth, and at a minimum, Defendant
 21 argues that any claim for punitive damages must be dismissed. (*Id.* at 12-13.)

22 In response, Plaintiff argues that because the deed of trust includes the phrase
 23 “[s]uch payments shall be applied to each Periodic Payment in the order in which it became
 24 due,” this shows that his “early September 22[, 2020] payment should have been applied
 25 to November 2020’s due date” instead of being applied to reduce the loan’s principal
 26 balance. (*Id.* at 1-2.) Turning to damages, Plaintiff “admits that he is lacking in the ability
 27 to place a monetary value on the cost of a reputation, on self-esteem, on dignity, and on
 28 self-respect” and then contends, somewhat confusingly, that he “was blessed in the past to

1 have been able to amass the large amounts of fees and charges paid to Defendant like late
 2 charges, non-sufficient fund charges, short payment corporate advances, and property
 3 inspections.” (*Id.* at 3.) Plaintiff continues: “[T]his duress and stress is beginning to take
 4 a major toil [sic] on Plaintiff’s health. The plaintiff places a monetary value on punitive
 5 damages and asks for no less than one point five million dollars along with clear title to the
 6 property.” (*Id.*) Finally, as for his “unfair accounting practices” and “false representation”
 7 claims, Plaintiff fails to address the dismissal arguments raised by Defendant and seems to
 8 indicate that both claims turn on the alleged misapplication of his September 22, 2020
 9 payment. (*Id.*)

10 In reply, Defendant argues that Plaintiff has seemingly abandoned any contract
 11 claim premised on the December 2022 and March 2023 payments, that the September 2020
 12 payment was properly applied to the loan’s principal balance consistent with § 2 of the
 13 deed of trust, and that Plaintiff’s contrary theory—that the September 2020 payment should
 14 have been applied toward the monthly payment that would have become due in November
 15 2020—is contrary to § 2 of the deed of trust and nonsensical, because “[i]f [Defendant]
 16 applied payments against the loan as [P]laintiff suggests, extra payments made by
 17 borrowers would go toward the next potential payment into perpetuity instead of lowering
 18 the principal balance.” (Doc. 23 at 1-3.) Next, Defendant contends that, to the extent
 19 Plaintiff seeks to recover reputational damages pursuant to his contract claim, such
 20 damages are both speculative and not cognizable under Arizona law. (*Id.* at 3-4.)
 21 Defendant also contends that Plaintiff’s reference to “large amounts of fees and charges
 22 paid to Defendant” cannot salvage his contract claim because (a) such fees are not alleged
 23 in the FAC and (b) at any rate, Defendant advanced various funds to Plaintiff and also
 24 “waived a considerable amount of fees and charges so [P]laintiff could meet his monthly
 25 payment obligations.” (*Id.* at 4.) Finally, Defendant notes that Plaintiff failed to address
 26 its dismissal arguments related to the “unfair accounting practices” and “false
 27 representation” claims. (*Id.* at 4-5.)

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1 III. Analysis2 The Court agrees with Defendant that the FAC is subject to dismissal under Rule
3 12(b)(6).4 As an initial matter, although Plaintiff faults Defendant for using his September 22,
5 2020 payment to reduce the principal balance of his loan instead of applying it toward the
6 monthly payment that was not yet due but would have become due in November 2020,
7 there is a strong argument that Defendant's approach was permissible under § 2 of the deed
8 of trust. (Doc. 21-1 at 4 [“[A]ll payments accepted and applied by Lender shall be applied
9 in the following order of priority: (a) interest due under the Note; (b) principal due under
10 the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic
11 Payment in the order in which it becomes due. Any remaining amounts shall be applied
12 first to late charges, second to any other amounts due under this Security Instrument, and
13 then to reduce the principal balance of the Note.”].) Nevertheless, even assuming for the
14 sake of argument that Defendant breached the deed of trust by misapplying the September
15 22, 2020 payment (and by misapplying the other payments referenced in the FAC), the
16 FAC does not allege any resulting *damages*.¹ In fact, the FAC alleges that from August
17 2020 to January 2022, Plaintiff was “on time” on all of his payments (Doc. 17 at 2), which
18 seems to undercut any suggestion that Plaintiff was harmed by the manner in which
19 Defendant applied a payment he made in September 2020. At any rate, the absence of
20 damages means Plaintiff cannot succeed on his contract claim. *See, e.g., Thomas v.*
21 *Montelucia Villas, LLC*, 302 P.3d 617, 621 (Ariz. 2013) (“To bring an action for the breach
22 of the contract, the plaintiff has the burden of proving the existence of the contract, its
23 breach and the resulting damages.”) (citation omitted); *Chartone, Inc. v. Bernini*, 83 P.3d
24 1103, 1111 (Ariz. Ct. App. 2004) (noting that “damages [are] an essential element of [a]
25 breach-of-contract claim”).26 In a seeming effort to shore up this deficiency, Plaintiff asserts in his opposition
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¹ Although the FAC asserts that the payment misapplications have “proven very
damaging” (Doc. 17 at 2), such conclusory, fact-free allegations are insufficient to state a
claim. *Iqbal*, 556 U.S. at 679-80.

1 brief that he has suffered damages arising from unspecified harm to his “reputation,” “self-
2 esteem,” “dignity,” and “self-respect.” (Doc. 22 at 3.) But putting aside that fact that the
3 FAC does not contain any allegations regarding reputational or emotional harm and that
4 the references to those categories of harm in the opposition brief are vague and
5 undeveloped, such damages are not recoverable under Arizona law in a contract action.
6 *Lindsey v. Univ. of Arizona*, 754 P.2d 1152, 1158 (Ariz. Ct. App. 1987) (“In an action for
7 breach of contract, the employee is not permitted recovery for injury to his reputation
8 because the computation of damages is too speculative and the damage cannot reasonably
9 be presumed to be within the contemplation of the parties when they entered into the
10 contract.”); *Davis v. Bank of America Corp.*, 2012 WL 5984939, *3 (D. Ariz. 2012)
11 (“Under Arizona law, punitive damages and damages for non-economic injuries, like
12 emotional distress, may not be recovered for breach of contract.”) (citations omitted); *Fox*
13 v. *Citicorp Credit Services, Inc.*, 15 F.3d 1507, 1517 (9th Cir. 1994) (with respect to the
14 Arizona “state-law claim . . . alleging breach of contract,” affirming the district court’s
15 grant of summary judgment where the plaintiffs “failed to put forward evidence of any
16 contractual damages” and instead only “claimed . . . emotional distress and mental
17 anguish,” because such damages are not “of a contractual nature”). Plaintiff also seems to
18 suggest for the first time in his opposition brief that he sustained damages in the form of
19 “late charges, non-sufficient fund charges, short payment corporate advances, and property
20 inspections” (Doc. 22 at 3), but those allegations do not appear in the FAC and Plaintiff
21 makes no effort to develop them or tether them to the challenged acts of payment
22 misapplication.

23 This leaves Plaintiff’s “unfair accounting practices” and “false representation”
24 claims. The Court agrees with Defendant that the former is subject to dismissal because it
25 is not cognizable under Arizona law. Nor has Plaintiff sufficiently alleged any damages
26 arising from challenged accounting practices, as discussed in the previous paragraph.
27 Finally, the “false representation” claim is subject to dismissal because, at a minimum,
28 there are insufficient allegations of reliance and resulting damage. *Carrel v. Lux*, 420 P.2d

1 564, 568 (Ariz. 1966) (under Arizona law, “[t]he elements necessary to establish fraudulent
 2 misrepresentation” include “the hearer’s . . . reliance on” the false representation and “his
 3 consequent and proximate injury”); *KB Home Tucson, Inc. v. Charter Oak Fire Ins. Co.*,
 4 340 P.3d 405, 412 n.7 (Ariz. Ct. App. 2014) (under Arizona law, the “elements of negligent
 5 misrepresentation” include that “the plaintiff justifiably relied on the incorrect
 6 information” and “resulting damage”).

7 **IV. Leave To Amend**

8 Defendant asks the Court to dismiss the FAC “with prejudice” because “any
 9 amendment is futile.” (Doc. 21 at 1; Doc. 23 at 6.) This request implicates Rule 15(a) of
 10 the Federal Rules of Civil Procedure, which “advises the court that ‘leave [to amend] shall
 11 be freely given when justice so requires.’” *Eminence Capital, LLC v. Aspeon, Inc.*, 316
 12 F.3d 1048, 1051 (9th Cir. 2003). “This policy is ‘to be applied with extreme liberality.’”
 13 *Id.* Thus, leave to amend should be granted unless “the amendment: (1) prejudices the
 14 opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4)
 15 is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir.
 16 2006).

17 Although the Court is quite skeptical that Plaintiff will be able to add any new
 18 factual allegations that could remedy the deficiencies identified in Part III above, the Court
 19 is also mindful that courts “have an obligation where the petitioner is pro se . . . to construe
 20 the pleadings liberally and to afford the petitioner the benefit of any doubt. In fact, before
 21 dismissing a pro se complaint the district court must provide the litigant with notice of the
 22 deficiencies in his complaint in order to ensure that the litigant uses the opportunity to
 23 amend effectively. A district court should not dismiss a pro se complaint without leave to
 24 amend unless it is absolutely clear that the deficiencies of the complaint could not be cured
 25 by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (cleaned up). Given
 26 these principles, the Court concludes that Plaintiff should be granted leave to amend.

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1 Accordingly,

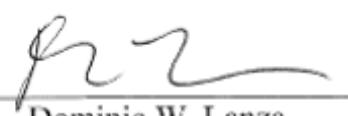
2 **IT IS ORDERED** that:

3 1. Defendant's motion to dismiss (Doc. 21) is **granted**. The FAC is dismissed.

4 2. Plaintiff may file a Second Amended Complaint ("SAC") within 14 days of
5 the issuance of this order. Any changes shall be limited to attempting to cure the
6 deficiencies raised in this order and Plaintiff shall, consistent with LRCiv 15.1(a), attach a
7 redlined version of the pleading as an exhibit.

8 3. If Plaintiff does not file a SAC within 14 days of the issuance of this order,
9 the Clerk shall enter judgment accordingly and terminate this action.

10 Dated this 26th day of June, 2024.

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13 Dominic W. Lanza
14 United States District Judge

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